

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 10/849,571
Applicants : Weidong Zhu *et al.*
Filed : May 20, 2004
Title : System and Method For Detecting Structural Damage
TC/A.U. : 2863
Examiner : Michael P. Nghiem
Docket No. : 266923-000007USPT
Customer No. : 70001

**RENEWED PETITION UNDER 37 C.F.R. § 1.78(a)(6) FOR
UNINTENTIONALLY DELAYED CLAIM FOR PRIORITY**

ATTN: Mail Stop PETITIONS
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This renewed petition under 37 C.F.R. § 1.78(a)(6) is hereby being filed responsive to the Decision on Petition, mailed November 23, 2009, dismissing the previously-filed petition.

In accordance with § 1.78 (a)(6), Applicants hereby present this renewed Petition to correct the claim to the benefit of priority under both 35 U.S.C. §§ 119(e), as is set forth in the attached Amendment, ADS, and Declaration.

Petitioner hereby respectfully petitions the Assistant Commissioner for Patents to accept late amendment to the specification to claim priority to a prior-filed provisional application on the grounds that the delay in making the amendment was unintentional. The events surrounding the unintentional delay in filing the amendment are as follows:

1. On or about December 30, 2008, it was discovered that the Applicant's timely claim for the benefit of U.S. Provisional Patent Application Serial No. 60/471,813, filed May 20, 2003, by the law firm of Fleshner & Kim, LLP, misstated in the filing documents the relevant U.S. Provisional Patent Application Serial No. 60/471,873, filed May 20, 2003, apparently through a clerical error inserting a "1" instead of a "7".
2. On December 30, 2008, the Applicant filed a "Second Supplemental Amendment" presenting an amendment to the specification requesting that the specification be amended to correct the error in naming the provisional application from 60/471,873 (incorrect) to 60/471,813 (correct).

3. On April 24, 2009, the Examiner mailed an Office Action taking the position that, despite the obviousness of the clerical error, the claim for the benefit of the prior filed application under 35 U.S.C. § 119(e) could not be corrected by amendment and that, if Applicants desired to claim the benefit of the prior-filed application no. 60/471,813, the present petition would have to be filed. The Examiner also stated that, due to the error in the original filing documents, the Declaration was defective and the Examiner stated that a new Declaration was required.

Accordingly, Petitioner submits this renewed Petition, as well as the Amendment, ADS, and newly executed Declaration and Power of Attorney, to perfect the claim for priority under 35 U.S.C. § 119(e). The Petitioner requests that the claim for priority, under 35 U.S.C. § 119(e), set forth in the attached Amendment and Declaration and Power of Attorney which accompany this petition be accepted under the unintentional delay provisions of 37 C.F.R. § 1.78(a)(6). The entire delay between the date the claim for priority was due under 37 C.F.R. § 1.78(a)(5)(ii) and the date of filing this renewed Petition and the accompanying Amendment, ADS, and signed Declaration and Power of Attorney was unintentional.

In view of the guidance provided in the Decision on page 2 of the Petition mailed November 23, 2009, the dismissing the previously-filed petition, the amendment amends the previously submitted incorporation by reference statement to clearly apply the incorporation by reference only to U.S. Provisional Patent Application Ser. No. 60/512,656 filed Oct. 10, 2003, but not to U.S. Provisional Patent Application Ser. No. 60/471,813.

The surcharge fee \$1410.00, set forth in 37 C.F.R. § 1.17(t), was previously paid and it is not believed that any additional fees are due in connection with this renewed Petition.

Therefore, the Applicants respectfully request that this renewed Petition to accept the delayed claim to priority be granted.

Date: December 10, 2009

By: **William D. PEGG, Reg.# 42,988/**
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